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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/726,883	12/03/2003	Jack S. Rosen	KH0694US (#90636)	5360

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EXAMINER

COCKS, JOSIAH C

ART UNIT PAPER NUMBER

3749

DATE MAILED: 12/01/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/726,883

Applicant(s)

ROSEN, JACK S.

Examiner

Josiah Cocks

Art Unit

3749

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 03 December 2003.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-9 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-9 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 03 December 2003 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date 12/3/03.
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____.

DETAILED ACTION

Drawings

1. The drawings are objected to under 37 CFR 1.83(a). The drawings have poor line quality and include hand sketches that are difficult to read. Formal drawings must be submitted that correct these deficiencies. No new matter should be entered.

Corrected drawing sheets in compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. The figure or figure number of an amended drawing should not be labeled as "amended." If a drawing figure is to be canceled, the appropriate figure must be removed from the replacement sheet, and where necessary, the remaining figures must be renumbered and appropriate changes made to the brief description of the several views of the drawings for consistency. Additional replacement sheets may be necessary to show the renumbering of the remaining figures. The replacement sheet(s) should be labeled "Replacement Sheet" in the page header (as per 37 CFR 1.84(c)) so as not to obstruct any portion of the drawing figures. If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

Claim Rejections - 35 USC § 103

2. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

3. Claims 1-7 are rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. Patent No. 5,832,915 to Skidmore et al. ("Skidmore") in view of U.S. Patent No. 5,909,729 to Nowicke, Jr. ("Nowicke").

Skidmore discloses in Figs. 1-12 an invention similar to that described in applicant's claims 1-7. In particular, Skidmore discloses a combination fireplace and grill that includes a base (21), a removable fire pit central housing in the form of a foraminous screen (38), a lid (23), food support grid (36, 37) and heat source/combustible material support (35) (see col. 3, lines 58-65). The device of Skidmore is operable as both a fire pit and a barbecue grill (see col. 3, lines 66-67) and includes the necessary supports for each use.

Skidmore does not disclose the use of a smoker attachment in order to use the device in a smoker mode.

Nowicke teaches a barbecue grill in the same field of endeavor as Skidmore. In Nowicke a grill base (10) includes an optional smoker attachment (15) in the form of a central housing with a cylindrical solid wall (see Fig. 2). The smoker attachment allows the grill to be converted for use as a food smoker.

Art Unit: 3749

Therefore, in regard to claims 1-7, it would have been obvious to a person of ordinary skill in the art at the time the invention was made to modify the grill assembly of Skidmore to incorporate the smoker attachment of Nowicke as smoker attachments are recognized in the art to desirably function to enhance the flavor of food products used in a grill assembly (see Nowicke, col. 1, lines 50-52).

4. Claim 8 is rejected under 35 U.S.C. 103(a) as being unpatentable over Skidmore in view of Nowicke as applied to claim 1 above, and further in view of U.S. Patent No. 3,915,145 to Tomita ("Tomita").

Skidmore in view of Nowicke teach all the limitations of claim 8 except that the base includes an accessible door.

Tomita teaches a barbecue grill in the same field of endeavor as Skidmore. In Fig. 10 of Tomita a base portion (132) includes a door (189).

Therefore, in regard to claim 8, it would have been obvious to a person of ordinary skill in the art at the time the invention was made to modify the grill base of Skidmore to incorporate the door of Tomita for the desirable purpose of allowing access to the base to permit insertion of a combustible fuel (see Tomita, col. 8, lines 23-25).

5. Claim 9 is rejected under 35 U.S.C. 103(a) as being unpatentable over Skidmore in view of Nowicke as applied to claim 1 above, and further in view of U.S. Patent No. 5,960,788 to Bach et al. ("Bach").

Art Unit: 3749

Skidmore in view of Nowicke teach all the limitations of claim 9 except possibly for a foraminous door in the fire pit housing.

Bach teaches a portable outdoor fireplace that includes a foraminous screen assembly (56) similar to that shown in Skidmore. The screen of Bach includes a foraminous door (92).

Therefore, in regard to claim 9, it would have been obvious to a person of ordinary skill in the art at the time the invention was made to modify the screen of Skidmore to incorporate the door of Bach to desirably allow access to the insertion of the screen assembly (see Bach, col. 5, lines 37-45).

Conclusion

6. This action is made non-final. A THREE month shortened statutory period for reply has been set. Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) months from the mailing date of this communication.

7. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. U.S. Patent to Wilbricht and Japanese Patent No. 10-323289 are cited to further show the state of the art concerning grill and fireplace combination devices.

8. Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished

Art Unit: 3749

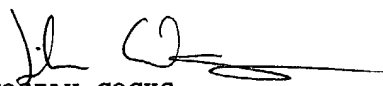
applications is available through Private PAIR only. For more information about the PAIR system, see <http://portal.uspto.gov/external/portal/pair>. Any questions on access to the Private PAIR system should be directed to the Electronic Business Center (EBC) at (866) 217-9197 (toll-free).

9. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Examiner Josiah Cocks whose telephone number is (571) 272-4874. The examiner can normally be reached on weekdays from 7:30 AM to 5:00 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Ira Lazarus, can be reached at (571) 272-4877. The fax phone number for the organization where this application or proceeding is assigned is (703) 872-9306.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the Group receptionist whose telephone number is (703) 308-0861.

jcc
November 28, 2004


JOSIAH COCKS
PRIMARY EXAMINER
ART UNIT 3749